

# **EXHIBIT “40”**

## CONDENSED TRANSCRIPT

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

VIKING YACHT COMPANY,  
a New Jersey Corporation,  
and POST MARINE CO.,  
INC., a New Jersey  
Corporation,  
Plaintiffs,

vs. NO. 05-538 (JEI/JBR)

COMPOSITES ONE, L.L.C.,  
a Foreign Limited  
Liability Co., and  
COOK COMPOSITES AND  
POLYMERS, a Missouri  
Corporation,  
Defendants.

Videotaped deposition of  
ANTHONY JAMES SMITH, taken at Walls  
Reporting, Inc., 107 Ridgely Avenue,  
Annapolis, Maryland, 21401, on  
Friday, December 1, 2006, commencing  
at 9:55 a.m., before James  
DeCrescenzo, a Registered Diplomat  
Reporter, Certified Shorthand  
Reporter (NJ), Approved Reporter of  
the United States District Court, and  
Notary Public, pursuant to notice.



**James DeCrescenzo Reporting, LLC**

215.564.3905  
PHONE

INNOVATING LITIGATION  
1880 JFK Blvd., 6th Floor • Philadelphia, PA 19103  
[www.jdreporting.com](http://www.jdreporting.com)

215.751.0581  
FAX

<p>34</p> <p>1 because where you're making, where 2 you're bolting the joint together 3 you're going to have an imperfection 4 and a relatively good chance of 5 what's called prerelease because you 6 now don't have a solid part 7 Air can be trapped in this 8 flange and you can get prerelease. 9 And now when I talk about the gel 10 coat shrinking, it can shrink away 11 from that corner So now you end up 12 with a lot of cosmetic work to do. 13 So I choose -- I've made 14 deliberate decisions that in order to 15 put out a product that can cross the 16 North Atlantic, go down and cross the 17 Pacific, I would rather put up with 18 cosmetic imperfections but know that 19 it was a strong product 20 Q How much attention does the 21 issue of gel coat cracking get in the 22 literature, boat building literature? 23 First of all, do you read boat 24 building literature and stay current</p>	<p>36</p> <p>1 it look pretty as it goes out the 2 door. 3 So you want your customer 4 to feel up front -- up front you want 5 the customer to feel he's buying a 6 Lexus When he starts to complain 7 about issues you would rather he was 8 fully aware that he was going to have 9 issues. 10 So it's sort of a Catch-22 11 On the one hand you want to tell him 12 the truth and on the other hand you 13 want him to buy the boat 14 BY MR. BIZAR: 15 Q You referred to a book that 16 Cook Composites puts out, an 17 informative book I think is the 18 language that you used 19 Are issues like stresses 20 from demolding and impact and the 21 consequences of too thick gel coat 22 addressed in that publication, to 23 your knowledge, to your recollection? 24 A I don't know about driving</p>
<p>35</p> <p>1 with boat building practices? 2 A. Yes 3 Q How much attention does the 4 issue of gel coat cracking get in the 5 marine industry in the literature? 6 MR. WEISZ: I object to the 7 form. 8 THE WITNESS: Probably 9 none 10 BY MR. BIZAR: 11 Q Why is that? 12 MR. WEISZ: I object to the 13 form. 14 THE WITNESS: Because the, 15 you don't want the public to know 16 about it I mean it's one of our 17 biggest problems that the customer 18 thinks he's buying a Lexus And 19 tragically he's not 20 He's buying a product that 21 has all kinds of potential flaws 22 which the industry has not found a 23 way around yet, other than spending a 24 fortune in man-hours trying to make</p>	<p>37</p> <p>1 wedges in the flange, but I do know 2 star cracking From my memory of the 3 book there's pages with colored 4 photographs showing you're going to 5 have long stress cracks, you're going 6 to have star stress cracks, you're 7 going to have alligatoring, you're 8 going to have a series, and there are 9 photographs that show you all these 10 various imperfections and then how to 11 fix them 12 Q Okay Now, you referred to 13 the fact that you at Performance 14 Cruising make boats that sail in the 15 North Atlantic and Pacific Let me 16 ask you about that 17 Of the thousand, almost a 18 thousand boats that you've 19 manufactured at Performance Cruising, 20 where are the customers for those 21 boats? 22 A. The vast majority of course 23 in America We have probably 40 in 24 England We have probably ten that</p>



James DeCrescenzo Reporting, LLC

215 564 3905

Innovating Litigation  
1880 JFK Blvd., 6<sup>th</sup> Floor Philadelphia, PA 19103  
www.JDReporting.com

FAX 215.751.0581

<p style="text-align: center;">38</p> <p>1 have sailed across to Hawaii. We  2 have them in New Zealand, other  3 islands in the Pacific.  4 We have them in the, we  5 have them in Chile around the Horn,  6 in the Mediterranean, in Canada.  7 Basically they're all over.  8 Q. Are boats made by  9 Performance Cruising sold to  10 customers who use those boats in  11 northern climates or not?  12 A. Absolutely -- well, if you  13 consider Canada northern, yes. I'm  14 not sure if I'm permitted to show you  15 this, but this is an advertisement we  16 put on the back of Sail Magazine, on  17 the back of a fairly big sail  18 magazine, and that's our full-page ad  19 on the back cover.  20 Q. And on the upper right  21 corner there's a picture of a boat, I  22 assume it's a boat that you've built,  23 surrounded by ice?  24 A. Yes.</p>	<p style="text-align: center;">40</p> <p>1 for interior parts. At the moment I  2 can't remember the name.  3 Q. Have you experienced  4 cracking in the manner that you've  5 described on boats manufactured with  6 all of the gel coats that you just  7 identified?  8 A. Yes.  9 Q. To your knowledge do other  10 marine manufacturers have gel coat  11 cracking issues with varying gel  12 coats?  13 A. Oh, most certainly.  14 Q. Are you familiar with a  15 particular CCP series of gel coat  16 called 953 series gel coat?  17 A. Yes.  18 Q. Are you familiar with a  19 particular style of that gel coat  20 called 953WA411 white?  21 A. Yes.  22 Q. Is that a product that PC  23 has used before?  24 A. Yes. We were using Cook's</p>
<p style="text-align: center;">39</p> <p>1 Q. Where is that picture  2 taken?  3 A. That's the Patagonia  4 channel around the Horn, Chile.  5 Q. Southern Chile?  6 A. Uh-huh.  7 MR. BIZAR: Let's mark this  8 as Smith Exhibit 2, please, for  9 identification.  10 (Deposition Exhibit Smith-2  11 was marked for identification.)  12 BY MR. BIZAR:  13 Q. This issue of gel coat  14 cracking that you've described, is  15 that common among all gel coats, to  16 your knowledge?  17 A. Yes. We use three  18 different gel coats. Cook's gel coat  19 on the outside of our Gemini  20 catamaran. We use, on the trimaran,  21 photograph is also on this  22 advertisement here, we use an HK gel  23 coat on that one.  24 And we use another gel coat</p>	<p style="text-align: center;">41</p> <p>1 gel coat prior to them -- I'm not a  2 chemist so I'm not quite sure what  3 changes, if any, were made, but the  4 model number prior to that we were  5 using since '82 probably, '83.  6 Q. Would that be the 952  7 series gel coat?  8 A. Probably. Sorry, I don't  9 remember the number.  10 Q. Okay. And at some point  11 did you change from the 952 to the  12 953 series gel coat?  13 A. We didn't have a choice.  14 They changed it and we just took the  15 next, the next series of gel coats  16 that they produced.  17 Q. Do you recall when it was  18 that Performance Cruising began using  19 Cook's 953 series gel coat?  20 A. I think this was the end of  21 the '90s. I recall a discussion  22 about color, because there appeared  23 to be a little bit more red.  24 I also, on the gel coat</p>



James DeCrescenzo Reporting, LLC

215 564 3905

Innovating Litigation  
1880 JFK Blvd., 6<sup>th</sup> Floor, Philadelphia, PA 19103  
www.JDReporting.com

FAX 215.751.0581

<p style="text-align: center;">54</p> <p>1 lawsuit</p> <p>2 Q Cook is not causing the</p> <p>3 lawsuit</p> <p>4 A Sorry. Viking and Post</p> <p>5 Q Let me just go back and ask</p> <p>6 the question I put to you. Have you</p> <p>7 been informed that Post Marine is</p> <p>8 claiming that the gel coat is</p> <p>9 defective and that the gel coat is</p> <p>10 causing catastrophic cracking?</p> <p>11 A. I have been informed of</p> <p>12 that, yes.</p> <p>13 Q. Okay. What has Performance</p> <p>14 Cruising's experience been with the</p> <p>15 gel coat that came from lot number</p> <p>16 921999100938 as applied to the boats</p> <p>17 it manufactured?</p> <p>18 A. Prior to coming to this</p> <p>19 deposition I tried to line up the</p> <p>20 products that I had built with these</p> <p>21 batch numbers</p> <p>22 I built Gemini's number</p> <p>23 671, that would have gone out of the</p> <p>24 door in January of 2000, up to 778</p>	<p style="text-align: center;">56</p> <p>1 was marked for identification )</p> <p>2 BY MR. BIZAR:</p> <p>3 Q. I'll describe B for the</p> <p>4 record. It's a multipage document</p> <p>5 that is titled Invoice number 664613,</p> <p>6 671971, 677868, three pages.</p> <p>7 Have I described Exhibit B</p> <p>8 accurately Mr. Smith?</p> <p>9 A. Yes.</p> <p>10 Q. And what is the product</p> <p>11 that's being sold pursuant to this</p> <p>12 invoice?</p> <p>13 A. Cook's gel coat 953WA411</p> <p>14 Sport</p> <p>15 Q. And what is the lot number</p> <p>16 associated with the gel coat that's</p> <p>17 being sold pursuant to this invoice?</p> <p>18 A. 922000021022.</p> <p>19 Q. I referred to this invoice,</p> <p>20 but in fact how many invoices are</p> <p>21 there?</p> <p>22 A. Three.</p> <p>23 Q. And is the gel coat and the</p> <p>24 product the same on each of them?</p>
<p style="text-align: center;">55</p> <p>1 that would have gone out of the door</p> <p>2 in sometime May of 2002.</p> <p>3 Those boats, boat number —</p> <p>4 I hope I'm not jumping too far ahead.</p> <p>5 Q. You're jumping a little bit</p> <p>6 far ahead.</p> <p>7 A. Okay. Sure.</p> <p>8 Q. My question — because the</p> <p>9 way it has to work is I have to ask</p> <p>10 you a question, you have to respond</p> <p>11 to my question.</p> <p>12 A. Sure.</p> <p>13 Q. My question is this. Has</p> <p>14 Performance Cruising experienced</p> <p>15 catastrophic, severe and unparalleled</p> <p>16 cracking or not on the boats</p> <p>17 manufactured with the same lot as was</p> <p>18 used on the Post Marine boat hulls</p> <p>19 50-060 and 50-067?</p> <p>20 A. No.</p> <p>21 Q. Let's look at the next</p> <p>22 exhibit, and we'll mark this as</p> <p>23 Exhibit B.</p> <p>24 (Deposition Exhibit Smith-B</p>	<p style="text-align: center;">57</p> <p>1 A. Yes</p> <p>2 Q. What are the ship dates on</p> <p>3 these invoices? What's the range of</p> <p>4 ship dates?</p> <p>5 A. 03/28/00, 04/11/00,</p> <p>6 04/25/00.</p> <p>7 Q. And if you would look back</p> <p>8 to Smith Exhibit 3, which is the</p> <p>9 interrogatory answers, that chart</p> <p>10 that we were looking at before, and</p> <p>11 if you would look down to hull number</p> <p>12 50-072. Tell me when you're there.</p> <p>13 A. Yep.</p> <p>14 Q. And look two columns to the</p> <p>15 right</p> <p>16 A. Yep.</p> <p>17 Q. Do you see a batch number</p> <p>18 that is the same as the batch number</p> <p>19 that, or the lot number that appears</p> <p>20 on the three invoices that make up</p> <p>21 Smith Exhibit B?</p> <p>22 A. Yes, I do.</p> <p>23 Q. And what has Performance</p> <p>24 Cruising's experience been with</p>



**James DeCrescenzo Reporting, LLC**

215.564.3905

Innovating Litigation  
1880 JFK Blvd., 6<sup>th</sup> Floor, Philadelphia, PA 19103  
www.JDReporting.com

FAX 215.751.0581

<p style="text-align: center;">58</p> <p>1 regard to catastrophic gel coat  2 cracking with the gel coat applied to  3 the boats, with the boats on which  4 the gel coat in Exhibit B was  5 applied?  6 Has there been catastrophic  7 cracking or not?  8 A. No, none  9 Q. No?  10 A. No.  11 Q. Let's go to the next  12 exhibit. We'll mark this as Smith  13 Exhibit C.  14 (Deposition Exhibit Smith-C  15 was marked for identification )  16 BY MR. BIZAR:  17 Q. Exhibit C, Mr. Smith, is a  18 one-page document that's titled  19 Invoice number 728029. Did I  20 describe Exhibit C accurately?  21 A. Yes.  22 Q. Do you recognize it?  23 A. Yes.  24 Q. What is it?</p>	<p style="text-align: center;">60</p> <p>1 the interrogatory answers, the chart  2 that's provided, at hull number  3 42-326, do you see that same lot  4 number in the column batch number?  5 A. Yes.  6 Q. And what if any experience  7 has Performance Cruising had with  8 catastrophic, severe or unparalleled  9 gel coat cracking on boats made with  10 the gel coat described in the invoice  11 that is Exhibit C?  12 A. None.  13 Q. Let's go to the next one.  14 We'll mark the next document as Smith  15 Exhibit D.  16 (Deposition Exhibit Smith-D  17 was marked for identification )  18 BY MR. BIZAR:  19 Q. Smith Exhibit D is a  20 one-page document that has invoice  21 number 774461 at the top. Have I  22 accurately described Exhibit D?  23 A. Yes.  24 Q. Do you recognize it?</p>
<p style="text-align: center;">59</p> <p>1 A. Another invoice for gel  2 coat.  3 Q. Is that true, that you  4 recognized Exhibit B as well?  5 A. Yes.  6 Q. The one we were just  7 looking at. Okay. And what was  8 Exhibit B, just so the record is  9 clear?  10 A. An invoice again for gel  11 coat.  12 Q. And the product that is  13 described in Exhibit C, turning your  14 attention back to Exhibit C, can you  15 tell the jurors what the product is?  16 A. Again it's gel coat  17 953WA411 Sport.  18 Q. And the lot number that  19 appears on invoice number 728029,  20 Exhibit C, below the description of  21 the gel coat, what lot number is  22 that?  23 A. 922000051169.  24 Q. And if you would look at</p>	<p style="text-align: center;">61</p> <p>1 A. Yes, another invoice for  2 gel coat.  3 Q. And the gel coat type?  4 A. 953WA411 Sport.  5 Q. And the lot number that  6 appears in the column product  7 description, what is that?  8 A. 922000070154.  9 Q. Now again, if you would  10 just direct your attention to the  11 interrogatory answers to the chart,  12 if you look at hulls 42-328 and  13 50-076. Let me know when you're  14 there.  15 A. Yes, I'm there.  16 Q. Do you see the same type of  17 gel coat in the gel coat number?  18 A. Yes.  19 Q. And do you see the same  20 batch number in the batch number  21 column as appears in your lot number?  22 A. Yes.  23 Q. And what has Performance  24 Cruising's experience been with</p>



James DeCrescenzo Reporting, LLC

215.564.3905

Innovating Litigation  
1880 JFK Blvd., 6<sup>th</sup> Floor, Philadelphia, PA 19103  
www.JDReporting.com

FAX 215.751.0581



<p>62</p> <p>1 catastrophic or severe cracking, if 2 any, on boats made with the gel coat 3 that came from lot number 4 922000070154 as reflected on Exhibit 5 D? 6 A. None. 7 MR. BIZAR: We'll mark this 8 next document as Exhibit E 9 (Deposition Exhibit Smith-E 10 was marked for identification ) 11 BY MR. BIZAR: 12 Q. Exhibit E is a three-page 13 document that has invoice number 14 791874, 801167 and 805300 at the top 15 of each page. 16 Have I accurately described 17 Exhibit E? 18 A. Yes. 19 Q. And do you recognize this 20 collection of invoices? 21 A. Yes, invoices for gel coat. 22 Q. And the invoices are to 23 your company? 24 A. Yes</p>	<p>64</p> <p>1 A. Yes. 2 Q. What was Performance 3 Cruising's experience, if any, with 4 catastrophic or unparalleled, severe, 5 extraordinary gel coat cracking on 6 boats manufactured with the gel coat 7 that came from the lot referenced on 8 Exhibit E? 9 A. None 10 Q. Let's go to the next 11 exhibit 12 (Deposition Exhibit Smith-F 13 was marked for identification ) 14 BY MR. BIZAR: 15 Q. The next exhibit we've had 16 the court reporter mark as Exhibit F, 17 Smith Exhibit F, it's a three-page 18 document that has invoice number 19 812761, 820956, and 825264 at the 20 top 21 Have I accurately described 22 Exhibit F? 23 A. Yes 24 Q. Do you recognize this</p>
<p>63</p> <p>1 Q. And what gel coat type is 2 being sold here? 3 A. Again 953WA411 Sport 4 Q. And the lot number that 5 appears, can you read that? 6 A. 922000080745. 7 Q. And if you would look in 8 the interrogatory answers at the 9 chart that Post Marine has provided, 10 the hull number is 50-079. And 11 apparently there were two batches 12 apparently that may have been used on 13 that boat. 14 If you look at the top-most 15 batch -- first of all, I'm sorry, let 16 me go back. For hull number 50-079 17 what type of gel coat did Post Marine 18 use? 19 A. The same, 953WA411. 20 Q. And the batch number, is 21 the batch number that was used by 22 Post Marine the same as the lot 23 number that was used by Performance 24 Cruising?</p>	<p>65</p> <p>1 collection of invoices? 2 A. Yes. 3 Q. Can you tell me what they 4 are? 5 A. An invoice for gel coat and 6 some other stuff. Yes, for gel coat 7 Q. And it's invoiced to whose 8 company? 9 A. To Performance Cruising 10 Q. And the product, the gel 11 coat product that's at issue? 12 A. Yes 13 Q. What is the product? 14 A. 953WA411 Sport. 15 Q. And what is the lot number 16 that appears on these invoices? 17 A. 922000100329. 18 Q. And if you would look at 19 the interrogatory answers, at the 20 chart on the last page of Post's 21 interrogatory answers, hulls number 22 50-080 and 47-011, tell me when 23 you're there. 24 A. Yes</p>



James DeCrescenzo Reporting, LLC

215.564.3905

Innovating Litigation  
1880 JFK Blvd., 6<sup>th</sup> Floor, Philadelphia, PA 19103  
www.JDReporting.com

FAX 215.751.0581

<p style="text-align: center;">66</p> <p>1 Q Do you see the same gel  2 coat product 953WA411?  3 A Yes.  4 Q What is the batch number?  5 A It's the same 922000100329  6 Q What experience, if any,  7 has Performance Cruising had with  8 severe, catastrophic, total gel coat  9 failure and cracking on boats made  10 with the gel coat that came from lot  11 number 922000100329, the gel coat  12 reflected on the invoices that make  13 up Exhibit F?  14 A None  15 MR. BIZAR: Mark this as  16 Smith Exhibit G  17 (Deposition Exhibit Smith-G  18 was marked for identification )  19 BY MR. BIZAR:  20 Q Exhibit G is a one-page  21 document that has invoice number  22 837813 at the top. Have I described  23 Exhibit G correctly?  24 A Yes</p>	<p style="text-align: center;">68</p> <p>1 was marked for identification )  2 BY MR. BIZAR:  3 Q Exhibit H is a two-page  4 document that has invoice numbers  5 876297 and 881098 at the top Have I  6 accurately described Exhibit H?  7 A Yes.  8 Q Do you recognize it?  9 A An invoice to Performance  10 Cruising for gel coat  11 Q And the gel coat product?  12 A 953WA411 Sport.  13 Q And the lot number?  14 A 922001020286.  15 Q And again on the  16 interrogatory answers, if you would  17 look at hull number 50-082, do you  18 see the same gel coat product and the  19 same batch number as the gel coat  20 product and lot number that appeared  21 on Exhibit H?  22 A Yes  23 Q And what experience, if  24 any, has Performance Cruising had</p>
<p style="text-align: center;">67</p> <p>1 Q Can you tell me what it is?  2 A It's another invoice to  3 Performance Cruising for gel coat  4 Q And the gel coat product on  5 the invoice?  6 A 953WA411 Sport.  7 Q And the lot number?  8 A 922000110994  9 Q And if you would look on  10 the interrogatory answers, right  11 beneath the hull we were just  12 talking, 47-011, do you see a  13 reference to the batch number that's  14 the same as the batch number that  15 appears on Exhibit G?  16 A Yes.  17 Q And what, if any,  18 experience has Performance Cruising  19 had with catastrophic, total or  20 severe gel coat cracking on boats  21 made with gel coat coming from the  22 lot number identified on Exhibit G?  23 A None.  24 (Deposition Exhibit Smith-H</p>	<p style="text-align: center;">69</p> <p>1 with catastrophic, severe, total gel  2 coat cracking on boats made with  3 953WA411 from the lot number that  4 appears on Exhibit H?  5 A None  6 Q I have just a few more to  7 go, maybe five or so, then we'll be  8 done with this tour of your invoices  9 This is Exhibit I.  10 (Deposition Exhibit Smith-I  11 was marked for identification.)  12 BY MR. BIZAR:  13 Q Exhibit I is a multipage  14 document that has invoice numbers at  15 the top 899257, 2107102, 2116188,  16 2124049, 2132893, 2137384, and  17 2145928.  18 Have I accurately described  19 Exhibit I?  20 A Yes  21 Q Can you tell us what  22 Exhibit I reflects or what it is?  23 A Again it's invoices to  24 Performance Cruising for gel coat</p>



James DeCrescenzo Reporting, LLC

215 564 3905

InnovatingLitigation  
1880 JFK Blvd., 6<sup>th</sup> Floor, Philadelphia PA 19103  
www.JDReporting.com

FAX 215 751 0581



<p>70</p> <p>1 Q And the gel coat product is</p> <p>2 the same product?</p> <p>3 A. It's the same, yes</p> <p>4 Q And that product is</p> <p>5 953WA411?</p> <p>6 A. Yes</p> <p>7 Q. And the lot number that</p> <p>8 appears on these invoices for that</p> <p>9 product, can you just read that into</p> <p>10 the record?</p> <p>11 A. 922001030724</p> <p>12 Q. If you look at the</p> <p>13 interrogatory answers for hull 56-003</p> <p>14 do you see the same gel coat product,</p> <p>15 953WA411, and the same batch number</p> <p>16 as appears on your product</p> <p>17 description and lot number in Exhibit</p> <p>18 I?</p> <p>19 A. Yes</p> <p>20 Q. And what experience, if</p> <p>21 any, has Performance Cruising had</p> <p>22 with catastrophic gel coat cracking</p> <p>23 on boats made with gel coat, 953</p> <p>24 series gel coat from this lot?</p>	<p>72</p> <p>1 Q. Same gel coat and same</p> <p>2 batch number as your lot number?</p> <p>3 A. Exactly, yes</p> <p>4 Q. And what experience, if</p> <p>5 any, has Performance Cruising had</p> <p>6 with catastrophic or total gel coat</p> <p>7 failure manifesting itself in the</p> <p>8 form of cracking on boats made with</p> <p>9 the gel coat reflected on Exhibit J?</p> <p>10 A. None</p> <p>11 MR. BIZAR: Exhibit K,</p> <p>12 please</p> <p>13 (Deposition Exhibit Smith-K</p> <p>14 was marked for identification )</p> <p>15 BY MR. BIZAR:</p> <p>16 Q Mr Smith, Exhibit K is a</p> <p>17 two-page document with invoice</p> <p>18 numbers 2225307 and 2237335 Have I</p> <p>19 accurately described it?</p> <p>20 A. Yes.</p> <p>21 Q. Tell us what Exhibit K is.</p> <p>22 A. These are invoices to</p> <p>23 Performance Cruising for gel coat</p> <p>24 Q And the product, the gel</p>
<p>71</p> <p>1 A. None</p> <p>2 MR. BIZAR: And let's mark</p> <p>3 Exhibit J.</p> <p>4 (Deposition Exhibit Smith-J</p> <p>5 was marked for identification )</p> <p>6 BY MR. BIZAR:</p> <p>7 Q. Exhibit J is a multipage</p> <p>8 document, two-page document that has</p> <p>9 invoice numbers 2175023 and 2191840.</p> <p>10 Did I accurately describe Exhibit J?</p> <p>11 A. Yes.</p> <p>12 Q. What is it?</p> <p>13 A. Invoices to Performance</p> <p>14 Cruising</p> <p>15 Q. For?</p> <p>16 A. For gel coat</p> <p>17 Q. And the lot number that</p> <p>18 appears on Exhibit J, can you read</p> <p>19 that?</p> <p>20 A. 922001061021</p> <p>21 Q. And if you look at the</p> <p>22 interrogatory answers under hull</p> <p>23 number 50-084</p> <p>24 A. It's the same.</p>	<p>73</p> <p>1 coat product?</p> <p>2 A. 953WA411 Sport</p> <p>3 Q. What is the lot number?</p> <p>4 A. 922001090193.</p> <p>5 Q. And if you would look at</p> <p>6 the interrogatory answers, hull</p> <p>7 number 50-086, what do you see in</p> <p>8 terms of the gel coat number, gel</p> <p>9 coat product and the batch number?</p> <p>10 A. It's the same gel coat and</p> <p>11 the same batch number</p> <p>12 Q. And what has your</p> <p>13 experience been with catastrophic gel</p> <p>14 coat cracking with this gel coat</p> <p>15 that's reflected on Exhibit K?</p> <p>16 A. None</p> <p>17 (Deposition Exhibit Smith-L</p> <p>18 was marked for identification )</p> <p>19 BY MR. BIZAR:</p> <p>20 Q. Three more to go. Exhibit</p> <p>21 L. is a one-page document that has</p> <p>22 invoice number 2255416 at the top.</p> <p>23 Have I accurately described it?</p> <p>24 A. Yes.</p>



James DeCrescenzo Reporting, LLC

215.564.3905

InnovatingLitigation  
1880 JFK Blvd , 6<sup>th</sup> Floor, Philadelphia PA 19103  
www.JDReporting.com

FAX 215.751.0581

<p style="text-align: center;">74</p> <p>1 Q. What is Exhibit L?</p> <p>2 A. An invoice to Performance</p> <p>3 Cruising for gel coat.</p> <p>4 Q. And the gel coat product in</p> <p>5 question?</p> <p>6 A. 953WA411 Sport.</p> <p>7 Q. And the lot number, what is</p> <p>8 the lot number?</p> <p>9 A. 922001100878.</p> <p>10 Q. And if you look at the Post</p> <p>11 Marine interrogatory answers at hull</p> <p>12 number 50-087, what do you see in</p> <p>13 terms of the gel coat number and the</p> <p>14 batch number?</p> <p>15 A. It's the same gel coat and</p> <p>16 the same batch number.</p> <p>17 Q. And what experience, if</p> <p>18 any, have you had at Performance</p> <p>19 Cruising with catastrophic gel coat</p> <p>20 cracking on boats made with the gel</p> <p>21 coat reflected on Exhibit L?</p> <p>22 A. None.</p> <p>23 Q. Second to last. We'll mark</p> <p>24 this as Exhibit M.</p>	<p style="text-align: center;">76</p> <p>1 interrogatory answers next to hulls</p> <p>2 50-088 and Post hull 50-089, what do</p> <p>3 you see in terms of the gel coat</p> <p>4 number, the gel coat product, and the</p> <p>5 batch number?</p> <p>6 A. Same gel coat, same batch</p> <p>7 number.</p> <p>8 Q. And what has your</p> <p>9 experience at Performance Cruising</p> <p>10 been with cracking, catastrophic</p> <p>11 cracking coming from boats made with</p> <p>12 this gel coat from this lot?</p> <p>13 A. None.</p> <p>14 Q. And we're at our last</p> <p>15 invoice or series of invoices. And</p> <p>16 we'll wrap this up and change tapes</p> <p>17 We'll mark this as Exhibit N.</p> <p>18 (Deposition Exhibit Smith-N</p> <p>19 was marked for identification )</p> <p>20 BY MR. BIZAR:</p> <p>21 Q. Exhibit N consists of three</p> <p>22 pages, invoice numbers 2333412,</p> <p>23 2338989, 2363521. Have I accurately</p> <p>24 described Exhibit N?</p>
<p style="text-align: center;">75</p> <p>1 (Deposition Exhibit Smith-M</p> <p>2 was marked for identification )</p> <p>3 BY MR. BIZAR:</p> <p>4 Q. Exhibit M is two pages and</p> <p>5 the invoice numbers that appear on it</p> <p>6 are invoice numbers 2284232, 2309302.</p> <p>7 Have I accurately described Exhibit</p> <p>8 M?</p> <p>9 A. Yes.</p> <p>10 Q. And what is Exhibit M?</p> <p>11 A. Again it's an invoice to</p> <p>12 Performance Cruising for gel coat</p> <p>13 Q. And what is the gel coat</p> <p>14 product that's being sold?</p> <p>15 A. 953WA411 Sport.</p> <p>16 Q. And what lot numbers appear</p> <p>17 on the invoices?</p> <p>18 A. 922002010282.</p> <p>19 Q. Do you see that on both</p> <p>20 pages? There are two pages. Do you</p> <p>21 see that number on the second page as</p> <p>22 well?</p> <p>23 A. Yes.</p> <p>24 Q. If you would look at the</p>	<p style="text-align: center;">77</p> <p>1 A. Yes.</p> <p>2 Q. Can you tell me what</p> <p>3 Exhibit N consists of?</p> <p>4 A. Again it's invoices to</p> <p>5 Performance Cruising for gel coat.</p> <p>6 Q. And the gel coat, what is</p> <p>7 the gel coat that's being sold on</p> <p>8 these invoices?</p> <p>9 A. 953WA411 Sport.</p> <p>10 Q. And the lot number that is</p> <p>11 common to all pages of the invoice,</p> <p>12 can you make it out?</p> <p>13 A. 922002040234.</p> <p>14 Q. And if you would look at</p> <p>15 the last line of the chart that was</p> <p>16 attached to the interrogatory</p> <p>17 answers.</p> <p>18 A. Yes.</p> <p>19 Q. Under hull 50-090 or next</p> <p>20 to Post Marine hull 50-090, what do</p> <p>21 you see in terms of the gel coat</p> <p>22 product number and the batch number?</p> <p>23 A. It's the same.</p> <p>24 Q. And what has your</p>



James DeCrescenzo Reporting, LLC

215 564 3905

Innovating Litigation

1880 JFK Blvd., 6<sup>th</sup> Floor, Philadelphia, PA 19103

www.JDReporting.com

FAX 215 751 0581

# **EXHIBIT “41”**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

VIKING YACHT COMPANY, a New Jersey Corporation and POST MARINE CO., INC., a New Jersey Corporation,	:	
	:	
	:	
Plaintiffs,	:	CIVIL ACTION NO. 05-538
	:	(JEI/JBR)
v.	:	
	:	
COMPOSITES ONE LLC, a Foreign Limited Liability Co., and COOK COMPOSITES AND POLYMERS, a Missouri Corporation,	:	
	:	
	:	
Defendants.	:	
	:	

**DECLARATION OF TONY SMITH**  
**ON BEHALF OF NON-PARTY PERFORMANCE CRUISING, INC.**

I, Tony Smith, declare as follows:

1. I am the owner and President of Performance Cruising, Inc. ("PC"). I have the authority to make this affidavit on behalf of PC.
2. PC is located in Annapolis, Maryland and manufactures catamarans and trimarans for sale in the marine industry.
3. PC has been manufacturing catamarans in the United States of America since 1980. To date, PC has manufactured more than 900 catamarans. These catamarans have been sold to customers all over the world and are used and stored in various climates, including extreme cold weather climates.
4. PC began purchasing gel coat manufactured by Cook Composites and Polymers

Co. ("CCP") and distributed by Composites One LLC ("C-1") in or around 1999.

5. Specifically, PC purchased CCP's 953 Series gel coat for use in manufacturing its catamarans and trimarans.

6. From approximately 1999 to the present, PC has used CCP 953WA411 gel coat in the manufacture of its catamarans and trimarans.

7. It is my understanding that both Post and Viking Yacht Co. ("Viking") have alleged that CCP's 953 Series gel coat is defective. In addition, it is also my understanding that both Viking and Post claim that the defects in the gel coat manifest themselves in the form of cracking of the gel coat finish.

8. Cracking of a boat's gel coat finish is a major issue in the marine industry. In the 40 years that I have been building boats, it has been my experience that given the numerous variables that can affect a gel coat's finish (*e.g.*, boat manufacturing issues, abuse in field, etc.), it is often impossible to determine why gel coat cracks.

9. To date, however, PC has not experienced any unconventional or extreme cracking issues in any of the boats that it has manufactured using CCP's 953WA411 gel coat.

10. It is my understanding, based on a review of invoices to PC and interrogatory responses provided by Kenneth Jensen, President of Post Marine Co., Inc. ("Post") in connection with the above-captioned litigation, that 953WA411 gel coat is the same formula and color that was used by Post from 1998 until approximately 2004.

11. In addition, upon information and belief based on my review of invoices to PC and interrogatory responses provided by Mr. Jensen in connection with the above-captioned litigation, both PC and Post shared the exact same batches of gel coat on at least 14 different occasions, including, but not limited to, the following batch numbers:

- 921999100938;
- 922000021022;
- 922000051169;
- 922000070154;
- 922000080745;
- 922000100329;
- 922000110994;
- 922001020286;
- 922001030724;
- 922001061021;
- 922001090193;
- 922001100878;
- 922002010282; and
- 922002040234.

12. It is further my understanding that these 14 batches of gel coat were used by Post to make some of the boats that Post has identified as suffering from catastrophic gel coat cracking and for which they claim damages in the above-captioned litigation.

13. Again, PC has not experienced any cracking complaints on boats made with gel coats used in common with Post that would suggest to me that the 953 Series gel coat itself is defective in any way.

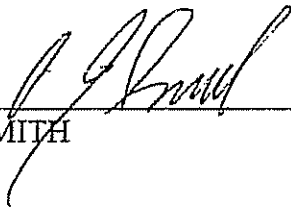
**[SIGNATURE ON NEXT PAGE]**



THIS DECLARATION IS GIVEN VOLUNTARILY AND WITHOUT AN OFFER OR PROMISE OF REWARD OR THREAT OF RETRIBUTION.

I HAVE READ THE FOREGOING DECLARATION CONSISTING OF 3 PAGES, EXCLUDING THIS PAGE I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF AT THE PRESENT TIME.

EXECUTED ON: MAY - 19 -, 2006

  
\_\_\_\_\_  
TONY SMITH